IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

Crl.MC.No. 7097 of 2001()

CRRP.116/1997 of ADDL.SESSIONS COURT, THALASSERY
MC.77/1994 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR

.....

PETITIONER:

M.K.SHOBHA, S/O.AMBU,
RESIDING AT MARATHANKOVVAI HOUSE,
P.O.KANDANGALI, VIA PAYYANNUR,
KANNUR DISTRICT.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS:

KAMBRA PRAKASHAN, S/O.KRISHNAN,
KAMBRA HOUSE, OPPOSITE THASLIS,
P.O.PALLIKUNNU, KANNUR DISTRICT.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH
SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05/11/2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl. M.C.No.7097 of 2001-B

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 5th day of November, 2007

O R D E R

The petitioner wife who had initiated proceedings under Section 125 Cr.P.C has sought for setting aside the orders of the courts below rejecting the maintenance to her.

2. M.C.No.77/1994 is filed by the petitioner herein seeking maintenance for herself and three minor children, wherein the trial court awarded maintenance at the rate of Rs.300/- per month to the children but declined maintenance to the petitioner as it was found that she was living apart without any sufficient reason.

3. It is the contention of the petitioner that the respondent whom she married on 14/09/1989 illtreated her demanding dowry and that he used to manhandle her after getting intoxicated and that when she was conceiving the third child i.e. the fourth petitioner in M.C she was taken to her parental house and thereafter, the respondent has not given anything towards the maintenance of herself and the children. It is also alleged that he has abused her father and even attempted to manhandle her at her parental house on 29/05/1994. Hence, it is her

case that her life is in danger if she continues to live with the first respondent.

4. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2, the petitioner and her father and CPW.1 the respondent.

5. The respondent had alleged that the petitioner is a quarrelsome woman and that she used to pick up quarrel with him and his relatives. According to him he had taken her to her house as per the custom in the community when she was pregnant. He has also submitted that he used to provide maintenance when he visits her house. According to him the parents and the petitioner had insisted him to stay permanently in her parental home. After delivery of the third child (fourth petitioner) she was not sent to his house although he repeatedly sought for her residing along with him at his house. According to him the parents of the petitioner are much affluent and hence she is not interested to come to him as his financial status is much below than that of the petitioner. The court below has noted that she has admitted that the house of the respondent has got a thatched roof and that her house is a pucca construction with a tiled

roof. It was also contended that she has lived with him in his house for about nine years. The only evidence adduced in support of the alleged cruelty is the version of PW.1 the petitioner and that of PW.2 her father. It was found, although, from the version of both PWs.1 and 2 that complaints were filed before the police on account of illtreatment by the respondent, the above documents were not sought to be produced. It was also brought out that she is the only daughter of her parents and her brother is employed in North India and is residing at his place of work. Further, the respondent had offered to take her back and provide maintenance. All the same PW.1 has stated in the court that she is not willing to accompany him. It was in the above circumstances that the court below ordered maintenance to the minor children but not to the petitioner.

5. The revisional court also confirmed the order of the court below for the reasons as mentioned by the trial court.

6. The counsel for the petitioner herein has stressed the order of the civil court in O.S.No.336/1996 instituted for past maintenance. The civil court allowed past maintenance to the petitioner and the children. Therein also she had alleged cruelty and

illtreatment and stated that it was on account of the above circumstances that she is not in a position to accompany him. The order of the Magistrate in M.C.No.77/1994 was produced in the civil court but no evidence was adduced in the instance of the respondent. It is seen that the order of the criminal court in M.C.No.77/1994 which was produced as Ext.B1 was not considered by the civil court at all. There is no mention of Ext.B1 in the judgment. It is also pertinent to note that it is after the pronouncement of the judgment in OS.No.336/1996 that the revisional court dismissed the petition by the wife. The judgment in O.S.No.336/1996 was not brought to the notice of the revisional court although the judgment by the revisional court was pronounced much subsequent to the decision in original suit. As already noted above, no evidence except the production of Ext.B1 judgment was produced before the civil court by the respondent. The counsel for the respondent has relied on the decision of the Apex Court in **Premshanker v. I.G. of police** **[2002 (3) KLT 389 (SC)]** that the relevancy of the judgment of the civil court will depend on facts of each case and that it would be relevant for limited purposes, such as motive or as a fact in issue as evidenced from Section 42 to 43 of the Evidence Act. As pointed out the issue in the M.C proceedings was not relevant in the original suit for past

maintenance. The offer to take back wife by the husband is not relevant in the suit for past maintenance. In the circumstances, I find that the decision of the civil court with respect to the matter of past maintenance has no relevance herein. I find that in view of the concurrent findings of the courts below there is no justification for resorting to Section 482 Cr.P.C to quash the orders of the courts below. The Crl.M.C is dismissed.

K.R.UDAYABHANU,
Judge

ms

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl. M.C.No.7097 of 2001-B

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

O R D E R

5th November, 2007